

Rec'd PCT/PTO 30 MAR 2005

PATENT COOPERATION TREATY

10/529612

From the  
INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

PCT

To:

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E.I. DU PONT DE NEMOURS AND COMPANY  
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Wilmington, DE 19805  
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NOTIFICATION OF TRANSMITTAL OF  
THE INTERNATIONAL PRELIMINARY  
EXAMINATION REPORT

(PCT Rule 71.1)

Date of mailing  
(day/month/year)

04.03.2005

Applicant's or agent's file reference  
BA9313PCT

IMPORTANT NOTIFICATION

International application No.  
PCT/US 03/36167

International filing date (day/month/year)  
12.11.2003

Priority date (day/month/year)  
15.11.2002

Applicant  
E.I. DU PONT DE NEMOURS AND COMPANY

1. The applicant is hereby notified that this International Preliminary Examining Authority transmits herewith the international preliminary examination report and its annexes, if any, established on the international application.
2. A copy of the report and its annexes, if any, is being transmitted to the International Bureau for communication to all the elected Offices.
3. Where required by any of the elected Offices, the International Bureau will prepare an English translation of the report (but not of any annexes) and will transmit such translation to those Offices.

4. REMINDER

The applicant must enter the national phase before each elected Office by performing certain acts (filing translations and paying national fees) within 30 months from the priority date (or later in some Offices) (Article 39(1)) (see also the reminder sent by the International Bureau with Form PCT/IB/301).

Where a translation of the international application must be furnished to an elected Office, that translation must contain a translation of any annexes to the international preliminary examination report. It is the applicant's responsibility to prepare and furnish such translation directly to each elected Office concerned.

For further details on the applicable time limits and requirements of the elected Offices, see Volume II of the PCT Applicant's Guide.

The applicant's attention is drawn to Article 33(5), which provides that the criteria of novelty, inventive step and industrial applicability described in Article 33(2) to (4) merely serve the purposes of international preliminary examination and that "any Contracting State may apply additional or different criteria for the purposes of deciding whether, in that State, the claimed inventions is patentable or not" (see also Article 27(5)). Such additional criteria may relate, for example, to exemptions from patentability, requirements for enabling disclosure, clarity and support for the claims.

EEL NOTED

Name and mailing address of the international preliminary examining authority:



European Patent Office  
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Authorized Officer

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15 May 2005

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08 MAR 2005

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# INTERNATIONAL PRELIMINARY EXAMINATION REPORT



(PCT Article 36 and Rule 70)

Applicant's or agent's file reference BA9313PCT	<b>FOR FURTHER ACTION</b> See Notification of Transmittal of International Preliminary Examination Report (Form PCT/PEA/416)	
International application No. PCT/US 03/36167	International filing date (day/month/year) 12.11.2003	Priority date (day/month/year) 15.11.2002
International Patent Classification (IPC) or both national classification and IPC C07D401/04, C07D401/00		
Applicant E.I. DU PONT DE NEMOURS AND COMPANY		

- This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.
- This REPORT consists of a total of 7 sheets, including this cover sheet.  
  
☐ This report is also accompanied by ANNEXES, i.e. sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).  
  
 These annexes consist of a total of    sheets.

3. This report contains indications relating to the following items:

- I ☒ Basis of the opinion
- II ☐ Priority
- III ☐ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- IV ☐ Lack of unity of invention
- V ☒ Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- VI ☐ Certain documents cited
- VII ☐ Certain defects in the international application
- VIII ☐ Certain observations on the international application

Date of submission of the demand  27.05.2004	Date of completion of this report  04.03.2005
Name and mailing address of the international preliminary examining authority:   European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465	Authorized Officer  Deutsch, W Telephone No. +49 89 2399-8281 

# INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International application No. PCT/US 03/36167

## I. Basis of the report

1. With regard to the **elements** of the international application (*Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17))*):

### Description, Pages

1-89 as originally filed

### Claims, Numbers

1-15 as originally filed

2. With regard to the **language**, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language: , which is:

- ☐ the language of a translation furnished for the purposes of the international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of a translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

- ☐ the description, pages:
- ☐ the claims, Nos.:
- ☐ the drawings, sheets:

5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed (Rule 70.2(c)).

*(Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.)*

6. Additional observations, if necessary:

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International application No. **PCT/US 03/36167**

**V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability;  
citations and explanations supporting such statement**

**1. Statement**

Novelty (N)	Yes: Claims	1-15
	No: Claims	
Inventive step (IS)	Yes: Claims	
	No: Claims	1-15
Industrial applicability (IA)	Yes: Claims	1-15
	No: Claims	

**2. Citations and explanations**  
**see separate sheet**

**INTERNATIONAL PRELIMINARY  
EXAMINATION REPORT - SEPARATE SHEET**

International application No. PCT/US 03/36167

The examination is being carried out on the **following application documents:**

Text for the Contracting States:

AL AT BE BG CH CY CZ DE DK EE ES FI FR GB GR HU IE IT LI LT LU LV MC MK NL PL PT RO SE SI SK  
TR

**Description, pages:**

1-89 as originally filed

**Claims, No.:**

1-15 as originally filed

Reference is made to the following documents:

- D1: WO 03/015518 A (SELBY THOMAS PAUL ; STEVENSON THOMAS MARTIN (US); DU PONT (US); LAH) 27 February 2003 (2003-02-27)
- D2: WO 03/024222 A (BERGER RICHARD ALAN ; DU PONT (US); FLEXNER JOHN LINDSEY (US)) 27 March 2003 (2003-03-27)
- D3: WO 03/106427 A (PASTERIS ROBERT JAMES ; STEVENSON THOMAS MARTIN (US); DU PONT (US);) 24 December 2003 (2003-12-24)
- D4: WO 02/094791 A (DU PONT ; CLARK DAVID ALAN (US)) 28 November 2002 (2002-11-28)
- D5: WO 03/015519 A (SELBY THOMAS PAUL ; STEVENSON THOMAS MARTIN (US); DU PONT (US); LAH) 27 February 2003 (2003-02-27)
- D6: WO 03/016282 A (SELBY THOMAS PAUL ; STEVENSON THOMAS MARTIN (US); DU PONT (US); ANN) 27 February 2003 (2003-02-27)
- D7: WO 03/016283 A (SELBY THOMAS PAUL ; STEVENSON THOMAS MARTIN (US); DU PONT (US); FRE) 27 February 2003 (2003-02-27)

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EXAMINATION REPORT - SEPARATE SHEET**

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International application No. PCT/US 03/36167

D8: WO 03/016284 A. (STEVENSON THOMAS MARTIN ;DU PONT (US); SONG YING (US); FINKELSTEIN) 27 February 2003 (2003-02-27)

D9: WO 01/70671 A2 (DU PONT DE NEMOURS ; LAHM GEORGE; MYERS BRIAN J; SELBY THOMAS; STEVENSON THOMAS M) 27 September 2001 (27.09.2001)

D10: WO 02/070483 A (DU PONT ;ANIS GARY DAVID (US); FINKELSTEIN BRUCE LAWRENCE (US)) 12 September 2002 (2002-09-12)

D11: EP-A-0 287 851 (BAYER AG) 26 October 1988 (1988-10-26)

It may be noted that there is an error in the search report with respect to the document cited as WO 01/70761 A .The correct document D9 is indicated above (cf also document cited on page 1 of the description).

V

**Novelty**

The present claims differ from those of D9 and D10 through the meanings of R<sup>5</sup>. In particular, it may be noted that the differences arises through the fact that in the first set of meanings of R<sup>5</sup>, these substituents are always substituents by R<sup>11</sup> and in the second group of meanings of R<sup>5</sup>, through the further substituents R<sup>7</sup> and R<sup>8</sup>.

**Inventive Step**

The closest prior art is considered to be D9 or D10, since both these documents disclose compounds, which are structurally very similar to those claimed and which have the same pesticidal activity.



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The compounds of the present application differ from those of D9 or D10 through modifications of the  $R^7$  and  $R^5$  substituents of the compounds of D9 and D10 respectively e.g. through the replacement of a  $-CH_2-$  by an oxygen atom (e.g.  $R^5$  is an alkoxyalkyl group in claim 1 of application and  $R^7$  is alkyl in the compounds of D9). Further modifications inter alia involve the replacement of alkyl by alkenyl or cycloalkyl; the replacement of a halo substituent on an alkyl group by a CN substituent.

Having regard for the large possible structural variations of the group J and the substituent  $R^5$  and  $R^7$  on this group in the compounds of D9 and D10, the skilled person would consider that further minor structural variation would lead to compounds wherein the desired activity is retained. Within the framework of the known structural variations of the D9 and D10 compounds, the modifications made by the Applicant such as those indicated above are minor and could be reasonably be expected to lead to compounds having pesticidal activity.

This view is also in line with the generalisations in the present claims made from the examples, which have been clearly been prepared. Thus the question as to what extent the structure of a chemical compound can be modified without causing major changes in its biological activity also relevant in respect of the question as to whether or not it is credible that all members of a certain group of chemical compounds solve a particular problem.

The problem underlying the invention, thus has to be seen in the provision of further compounds having a surprising activity. In the absence of evidence for such an surprising activity an inventive step cannot be acknowledged.

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At present the priority document of the present application is not available to the examiner. For the purposes of this opinion it has been assumed that the priority of the application is valid.

**INTERNATIONAL PRELIMINARY  
EXAMINATION REPORT - SEPARATE SHEET**

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In this case documents D1, D2, D4 to D8 do not constitute prior art within the meaning of Rule 64.1 (b). It is however to be noted that documents D1, D2 and D5-D8 contain subject matter which could become relevant for novelty at the regional stage of examination. The filing date of D1, D2 and D4 to D8 is earlier than the priority date of the present application.

It may also be noted that the priority date/filing date of D3 are earlier than those of the application.